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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/624,874
	Filing Date	07/22/2003
	First Named Inventor	Lamson - Scribner
	Art Unit	3644
	Examiner Name	Lofdahl, Jordan M
Total Number of Pages in This Submission	Attorney Docket Number	235p - Lamson

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Applicant : Kimberly Adams Lamson-Scribner
Application No. : 10/624,874
Filed : 07/22/2003
Title : INTERACTIVE TOY FOR CATS AND OTHER PREY
ORIENTED ANIMALS
Group Art Unit : 3644
Examiner : Lofdahl, Jordan M
Attorney Docket No. : 235p-Lamson

The Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

AMENDMENT

Dear Mr. Lofdahl,

The applicant thanks the examiner for his efforts in the case to date.

Please amend the above referenced patent application as follows.

In the Claims:

A separate paper with the complete claim set thereon is included herewith.

Applicant does not believe that any of the above amendments add new material to the
5 application. In particular, limitations of the amended claims are taken from other claims.

Certain amendments have been made in order to broaden the scope of the claims, rather

than in response to any patentability issues known to applicant. Certain amendments have been made in response to issues raised by the examiner, these amendments to the claims are discussed below in specific response to the examiner's rejections.

* * *

Response

Rejection of Claim 12 under 35 USC §112:

5 The examiner presently rejects claim 12 as unsupported by the specification, stating that there is insufficient antecedent basis for “beam end bumper”. The applicant very respectfully draws the examiner’s attention to the fact that this term may be found in the disclosure in the three paragraphs spanning pages 20 and 21, which utilize the exact language of the claims. Additional more detailed discussions of bumpers, and diagrams thereof, may be found in the diagrams Fig. 5 and Fig. 6, and in the discussions thereof. For example, at page 43, lines 8
10 through 10:

The ends of the rods are protected from being potential pokers by use of plastic bumpers, ball bumpers, feathers, or softening by some other means.

15 Other references provide further details at page 52, line 19, onto page 53. And additional other references occur at page 23, page 24 and other places in the application document. The applicant believes these more than adequately describe the function and structures of such beam end bumpers.

20 For that reason, applicant earnestly urges that the limitation in claim 12 is fully supported by the original disclosure, and is allowable.

Rejection of Claims 1-17 (except claim 13) under 35 USC §102:

The examiner presently rejects the claims 1 through 17 (exception: claim 13) application as being anticipated by US Patent No. 2,994,156 to Steiner et al ("the '156" patent).

5 The '156 patent teaches a children's mobile designed for suspension from the rail of a child's crib.

The applicant first respectfully urges that the '156 device is not a relevant item of prior art. While it is somewhat similar in being a suspension of spars and strings, it relates to children's toys, not animal toys. Thus the present invention utilizes "prey animals" for typical house pets to bat at and physically contact while the '156 device uses visually appealing animals
10 such as butterflies which are presumably not "prey" to children.

A number of structural differences may be found as a result of this fundamental difference. Firstly, in original claim 8, the limitation is expressed, "such suspension members are strong enough to resist breaking by a prey animal using the cat toy", a limitation not necessary in a toy basically intended for visual use and not physical use. Physical use of mobile
15 elements by children is discouraged: the children may choke upon parts of the toy. For example, in Fig. 1 of the '156 patent, it is seen that that device hangs at a level above the railing of the child's crib, i.e. above the level the child is allowed to reach (since children are also to be prevented from falling out of cribs), and thus is out of reach of the child. This argument is borne out by original claim 15 of the present application, which states "suspended at a height such that
20 the prey animal may reach the cat attractants suspended from the bottom tier when the cat toy is not in motion." It would be fatally disastrous if a device without suspensors strong enough to withstand a baby's grasp were suspended at a height at which the baby could reach the bottom

tier.

The same arguments apply to those other children's toys cited by the examiner or made of record by the examiner.

5 The applicant notes that the '156 device does not appear to have any actual beam end bumpers thereon. The examiner, in rejecting claim 11, made the following statement in the First Office Action: "As to claim 11, disclosed is an end bumper (read as the end of beam)." This is the entire discussion of claim 11 in the First Office Action.

10 Bumpers are separate structures, located at the end of the beam for safety reasons, which prevent the end of the beam from harming anything it may impact (such as a pet's or onlooker's eye). The bumpers are not to be confused with notches or holes at the end of the beams, nor with the simulated prey dangling below the beams. The applicant is unaware of any common device having bumpers which are merely the end of the item: vehicle bumpers are a separate structure of the vehicle, shopping cart bumpers are a defined structure and so on. The applicant thus rejects the argument that the end of a beam is a bumper, just as the end of a car is not a bumper.

15 Applicant respectfully assumes that this "reading" on the examiner's part is only necessary if the disclosure's structural descriptions of bumpers are not utilized (see the previous section regarding the Section 112 rejection of claim 12).

20 This limitation from original claim 11 has been brought into amended claim 1 by the applicant's amendment enclosed herewith. Thus, amended claim 1 and all claims dependent therefrom are allowable for containing structure not disclosed by the prior art cited.

In regard to rejection of independent claim 16, this claim has been modified to include the additional element discussed below in reference to the rejection of claim 13 (a coating), and thus

is allowable for containing structure not disclosed by the prior art cited.

In regard to rejection of original independent claim 17, the applicant has amended this claim to include a climbable object as a requirement rather than merely a device capable of being placed above a climbable object. The examiner has rejected originally filed claim 14, which
5 merely claimed a device capable of being placed above a climbable object, but that limitation is now changed to include the climbable object. Thus, the limitation included in amended claim 16 is similar to but not the same as that stated previously in claim 14. The difference is that the climbable object is now a direct limitation of the claim. Thus, amended claim 16 is allowable for containing structure not disclosed by the prior art cited.

10 The examiner includes a number of very short sentences in the first office action, rejecting claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15. Original claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14 and 15 are now dependent upon amended claim 1, which includes a structure not shown in the prior art, and thus these dependent claims are now allowable as depending from an allowable independent claim.

15
Rejection of Claim 13 under 35 USC §103:

The examiner presently rejects claim 13 under the obviousness doctrine of 35 USC Section 103. In particular, the examiner refers to the coating of the beams with a layer of material (for safety) and states that this is a selection of a known material on the basis of
20 suitability for the intended use.

However, the cited doctrine properly applies in cases in which an element of the claim is present in the prior art and the material used in the element is merely altered or a different

material for the element is selected. The examiner skips over the issue of whether any beam coating exists in the prior art: the examiner has so far not cited prior art any prior art having the element listed, that is, the coating is not present in the relevant prior art. Original claim 13 states as follows:

5

13. The cat toy of claim 1, further comprising:
beam coating covering at least a portion of the beams.

10

A dependent claim differentiates over the independent claim it cites when it introduces some new limitation over the independent claim. In this case the language “further comprises” is used, indicating the addition of a new element: a coating. The relationship of the coating to the beam is taught, (“covering at least a portion”) and the distinction between a coating and a beam becomes self evident.

15

The prior art cited and made of record does not disclose any coating disposed upon the beams thereof. Therefore the material of the coating is irrelevant and questions about the obviousness or lack thereof of the material skip over the more important issue of whether the prior art even discloses the element at all.

20

This limitation is incorporated into amended claim 16, and therefore, claim 16 is now allowable for citing structure not present in the prior art.

For all the foregoing reasons, applicant respectfully urges that the claims of the application are now in condition for immediate allowance, and such action is requested. The

examiner is respectfully urged to contact applicant's counsel, Craig W. Barber, PO Box 16220,
Golden, Colorado, 80402-6004, 303-278-9973, fax 303-278-9977, with any questions or
comments.

Signed: 

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